

Remarks

This is in response to the final Office Action mailed February 17, 2006, which sustained the final rejection of all pending claims 1-16 under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,021,273 ("Griesemer '273") in view of U.S. Patent No. 5,210,876 ("Uchida '876"). The Applicant requests reconsideration and withdrawal of this final rejection.

The rejection is improper on the basis that the Examiner has failed to render a reasonable construction of the claims. Claim 1 generally features "*execution of a selected virtual function by the virtual machine causes the processor to execute a corresponding native function, and wherein the corresponding native function is executed to evaluate concurrent execution of at least one other native function.*"

The Examiner has determined that there is no difference between the terms "evaluation" and "execution," and thus views these terms as being interchangeable. See final Office Action, p. 2, lines 6-12 ("*the [claim language] is interpreted to mean: the evaluation of a function by a virtual machine (i.e., software interpreter process) results in the evaluation (i.e. execution) of a corresponding native (i.e. physical machine) code function*").

This is respectfully traversed. No one with skill in the art would interpret "evaluation" and "execution" (as well as "execute" and "executed") from claim 1 as being synonymous as suggested by the Examiner. These terms are well understood by the skilled artisan and are to be given their respective ordinary and customary meanings. See e.g., specification, page 1, lines 10-12; page 7, line 20 to page 8, line 17; page 19, lines 9-15.

Further, the plain language of claim 1 requires these different terms to be given different meanings. See e.g., *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*); MPEP 2111.01. Substituting “execute” for “evaluate” would render claim 1 to read “*the corresponding native function is executed to execute concurrent execution of at least one other native function.*”

Contrawise, substituting “evaluate” for “execute” provides “*the corresponding native function is evaluated to evaluate concurrent evaluation of at least one other native function.*” Both of these phrases are meaningless and eviscerate the plain language of the claim, which recites “*the corresponding native function is executed to evaluate concurrent execution of at least one other native function.*”

The Examiner’s construction is thus untenable as a matter of law, and reconsideration and withdrawal of the rejection are requested on this basis.

Moreover, even with the above substitution of terms, the Examiner still fails to find that the respective Griesemer ‘273 and Uchida ‘876 references actually teach or suggest all of the limitations of claim 1. The following language is difficult to parse, but the Examiner states:

The evaluation of a function by a virtual machine (i.e. software interpreter process) results in the evaluation (i.e. execution) of a corresponding native (i.e. physical machine) code function (which is what all virtual-machine/language interpreters inherently do), may itself result in the concurrent evaluation of at least one other (i.e. different) native (i.e. physical machine) code function (i.e. the native function code function may itself invoke/call another potentially concurrent [within another software process or physical machine] native function [for example a “remote procedure call” threw[sic] potentially a “foreign function interface”])...” (Final Office Action, p. 2, lines 10-17, emphasis added)

The Examiner has improperly concluded that claim 1 merely requires a called native function to call another native function. As discussed above the Applicant respectfully

#359321

denies this. But even so, the Examiner still fails to find that the references actually teach or suggest to do this step.

As set forth above, the Examiner merely speculates that the references “may” call another native function, and such other function might “potentially” be concurrently operating. Thus, even assuming *arguendo* that the above proposed construction by the Examiner were valid, which the Applicant traverses, the Examiner has still failed to establish a *prima facie* case of obviousness by showing that all of the limitations are taught or suggested by the references.

When the claim is properly construed, it can readily be seen that the language “*the corresponding native function is executed to evaluate concurrent execution of at least one other native function*” is not taught or suggested by Griesemer ‘273, Uchida ‘876 or the other art of record. Moreover, there is nothing to motivate one skilled in the art to arrive at the claimed combination from these various references.

Reconsideration and withdrawal of the rejection of independent claim 1, and for the claims depending therefrom, are accordingly requested. As the above references are similarly deficient with regard to the subject matter of independent claim 10, reconsideration and withdrawal of the rejection of claim 10, and for the claims depending therefrom, are also respectfully solicited.

Conclusion


This is intended to be a complete response to the final Office Action mailed February 17, 2006. The Applicant requests reconsideration and allowance of all of the pending claims.

#359321

If the final rejection is sustained, the Applicant invites the Examiner to provide further clarification of the rejection. This will enable the Applicant to set forth a better record for a pre-appeal brief request for review.

Should any questions arise concerning this response, please contact the below signed Attorney.

Respectfully submitted,

By: 
Randall K. McCarthy, Registration No. 39,297
Mitchell K. McCarthy, Registration No. 38,794
Fellers, Snider, Blankenship, Bailey and Tippens, P.C.
100 N. Broadway, Suite 1700
Oklahoma City, Oklahoma 73102
Telephone: (405) 232-0621
Facsimile: (405) 232-9659
Customer No. 33900